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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/035,499	10/26/2001	Richard W. Avery	J-3086	3101

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EXAMINER
DELCOTTO, GREGORY R

ART UNIT	PAPER NUMBER
1751	

DATE MAILED: 08/14/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/035,499	AVERY ET AL.
	Examiner	Art Unit
	Gregory R. Del Cotto	1751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Peri d for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *27 May 2003* .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1 and 3-9* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1, 3-9* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) *6* .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

1. Claims 1 and 3-9 are pending. Claims 2 and 10-18 have been cancelled. Applicant's amendments and arguments filed 5/19/03 have been entered.

Applicant's election of Group I in Paper No. 7 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Objections/Rejections Withdrawn

The following objections/rejections as set forth in Paper #5 have been withdrawn:

The rejection of claims 1-4 and 6-9 under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Lang et al (US 4,931,271) has been withdrawn.

The rejection of Claims 1-9 under 35 U.S.C. 103(a) as being unpatentable over Cauwet et al (US 5,661,118) has been withdrawn.

The rejection of Claims 1-9 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-8 of copending Application No. 10/035318 has been withdrawn.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in-
(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or
(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.

4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1, 3-6, 8, and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 01/42415.

'415 teaches the use of polymeric material in the treatment of hard surfaces to deal with scale forming calcium salts. See Abstract. Polymers which are particularly suitable for use include chitosan acetic acid salt (acetate), Celquat H-100, etc. See page 20, line 1-30. Additionally the hard surface compositions contain water, anionic and nonionic surfactants, etc. See page 21, line 1 to page 22, line 30. Additionally, the compositions may contain cationic surfactants such as cetyltrimethyl ammonium bromide, etc. See page 26, lines 5-20. Additionally, the compositions may contain dicarboxylic acids, citrates, etc. See page 27, lines 5-25. Also, the compositions are formulated within the ranges from 3.5 to 6. See page 29, lines 5-25.

'415 does not specifically teach a cleaning composition having the specific pH containing a surfactant, a poly D-glucosamine, water, and the other requisite

components of the composition in the specific proportions as recited by the instant claims.

It would have been obvious, at the time the invention was made, to formulate a cleaning composition having the specific pH containing a surfactant, a poly D-glucosamine, water, and the other requisite components of the composition in the specific proportions as recited by the instant claims, with a reasonable expectation of success and similar results with respect to other disclosed components, because the broad teachings of '415suggest a cleaning composition having the specific pH containing a surfactant, a poly D-glucosamine, water, and the other requisite components of the composition in the specific proportions as recited by the instant claims.

Claims 1, 6, 8, and 9 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over WO 99/03959.

'959 teaches novel detergent mixtures containing ester quater, chitosan and/or chitosan derivatives, protein hydrolyzates, and optionally, alkyl and/or alkenyl oligolgycosides and/or betaine. See Abstract. Specifically, '959 teaches compositions containing 35% distearydimethylammonium chloride, 1% chitosan, 14% wheat protein hydrolysate, and the balance water.

Note that, the Examiner asserts that the compositions specifically taught by '959 would inherently have the same pH as recited by the instant claims because '959 teaches compositions containing the same components in the same proportions as

recited by the instant claims. Accordingly, the broad teachings of '959 anticipate the material limitations of the instant claims.

Alternatively, even if the broad teachings of '959 are not sufficient to anticipate the material limitations of the instant claims, it would have been nonetheless obvious to one of ordinary skill in the art to arrive at the claimed pH value of the composition in order to provide the optimum cleaning properties to the composition because '959 teach that the amount of surfactant, water, chitosan and other required components added to the composition may be varied.

Claims 3-5 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 99/03959.

'959 does not specifically teach a cleaning composition having the specific pH containing a thickener, acid, and the other requisite components of the composition in the specific proportions as recited by the instant claims.

It would have been obvious, at the time the invention was made, to formulate a cleaning composition containing a thickener, acid, and the other requisite components of the composition in the specific proportions as recited by the instant claims, with a reasonable expectation of success and similar results with respect to other disclosed components, because the broad teaching of '959 suggests a cleaning composition containing a thickener, acid, and the other requisite components of the composition in the specific proportions as recited by the instant claims.

Claims 1, 3-6, 8, and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Garris (US 5,776,876).

Garris teaches effective, multi-use filter cleaning compositions including 5% to 60% of a strong acid, 1 to 40% of a surfactant and 0.5% to 20% of a sequestrant/builder. The compositions optionally include 0.5% to 10% of a water soluble organic solvent, and/or 0.5% to 10% of nonionic surfactant. See Abstract. Suitable surfactants include anionic, cationic such as various quaternary ammonium chlorides, etc. See column 2, lines 30-55. Organic acids may serve as the builder and suitable acids include citric acid, lactic acid, etc. See column 2, line 60 to column 3, line 10. The compositions may also include a water-soluble polymeric agent as the builder sequestrant and such agents include chitosan, polyvinylamine, etc. Suitable organic solvents include glycol ethers, glycols, alcohols, etc. See column 3, lines 10-35. Examples contain greater than 50% water. See Example 10, 13, etc.

Note that, with respect to the pH as recited by the instant claims, the Examiner asserts that the compositions as taught by Garris et al would encompass compositions having a pH of less than 7 as recited by the instant claims because Garris et al suggest composition containing the same components in the same proportions as recited by the instant claims.

Garris et al do not specifically teach a cleaning composition having the specific pH containing a surfactant, a poly D-glucosamine, water, and the other requisite components of the composition in the specific proportions as recited by the instant claims.

It would have been obvious, at the time the invention was made, to formulate a cleaning composition having the specific pH containing a surfactant, a poly D-

glucosamine, water, and the other requisite components of the composition in the specific proportions as recited by the instant claims, with a reasonable expectation of success and similar results with respect to other disclosed components, because the broad teaching of Garris suggest a cleaning composition having the specific pH containing a surfactant, a poly D-glucosamine, water, and the other requisite components of the composition in the specific proportions as recited by the instant claims.

Response to Arguments

With respect to Garris, Applicant states that the Office Action fails to address why one would be motivated to use a filter related formulation as a hard surface cleaner and that Garris only briefly refers to chitosan as part of a laundry list of chemicals and nowhere suggests any antimicrobial property. In response, note that, the Examiner maintains that a filter cleaner formulation as taught by Garris would fall within the generic category of hard surface as recited by the instant claims. Additionally, while Garris does not list any antimicrobial property for chitosan, Garris teaches the presence of chitosan in amounts which are antimicrobially effective. Note that, the reason or motivation to modify the reference may often suggest what the inventor has done, but for a different purpose or to solve a different problem. It is not necessary that the prior art suggest the combination to achieve the same advantage or result discovered by applicant. In re Linter, 458 F.2d 1013, 173 USPQ 560 (CCPA 1972). See MPEP 2144.

Conclusion

2. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Remaining references cited but not relied upon are considered to be cumulative to or less pertinent than those relied upon or discussed above.

Applicant is reminded that any evidence to be presented in accordance with 37 CFR 1.131 or 1.132 should be submitted before final rejection in order to be considered timely.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory R. Del Cotto whose telephone number is (703) 308-2519. The examiner can normally be reached on Mon. thru Fri. from 8:30 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on (703) 308-4708. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

GREGORY DELCOTTO
PRIMARY EXAMINER

GRD
August 10, 2003